IN THE

Supreme Court of The United States

OCTOBER TERM, 1977

No. 77-36

SABINE TOWING AND TRANSPORTATION COMPANY, INC.,
Petitioner,

v.

ZAPATA UGLAND DRILLING, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Joseph D. Cheavens,
Attorney for Respondent

Of Counsel:
BAKER & BOTTS
3000 One Shell Plaza
Houston, Texas
(713) 229-1250

Bowne of Houston, Inc. Printed in U.S.A.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	2
ARGUMENT	3
I. The decisions below were totally correct in using the Drilling Contract daily operating rate as an evidentiary guide for measuring damages for loss of use of the vessel	3
II. The awarding of prejudgment interest at a rate equivalent to the injured party's cost of borrowing was not an abuse of discretion	5
CONCLUSION	6
CERTIFICATE OF SERVICE	7

AUTHORITIES CITED

Cases

Agwilines, Inc. v. Eagle Oil & Shipping Co., 153 F.2d 869 (2d Cir. 1946) 3

Conqueror, The, 166 U.S. 110 (1897) 3

Continental Oil Co. v. S.S. Electra, 431 F.2d 391 (5th Cir. 1970) 3, 4

Delta Marine Drilling Co. v. M/V Baroid Ranger, 454 F.2d 128 (5th Cir. 1972) 3, 4

Gardner v. The Calvert, 253 F.2d 395, 402-03 (3d Cir. 1958) 5

Geotechnical Corp. v. Pure Oil Co., 214 F.2d 476 (5th Cir. 1954) 5

Pinto v. M/S Fernwood, 507 F.2d 1327, 1331 (1st Cir. 1974) 4

Potomac, The, 105 U.S. 630 (1882) 3

	Page
Sinclair Refining Co. v. S.S. Green Island, 426 F.2d 260, 262 (5th Cir. 1970)	5
Skou v. United States, 526 F.2d 293 (5th Cir. 1976)	3, 4
Texts	
Gilmore & Black, The Law of Admiralty 526 (2d ed. 1975)	3

In The

Supreme Court of The United States

October Term, 1977

No. 77-36

Sabine Towing and Transportation Company, Inc.,

Petitioner,

v.

Zapata Ugland Drilling, Inc.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

QUESTIONS PRESENTED

I. Whether the District Court and the Court of Appeals erred in awarding damages for loss of use of a drilling vessel damaged in a marine collision when such damages were set precisely in accordance with settled law.

II. Whether the District Court and the Court of Appeals erred in awarding prejudgment interest at a rate equivalent to the injured party's cost of borrowing money.

STATEMENT OF THE CASE

This is a limitation of liability action instituted by petitioner Sabine Towing and Transportation Company, Inc. (hereinafter referred to as "Sabine") following a collision between Sabine's tug, the M/V VULCAN, and the ZAPATA UGLAND. The ZAPATA UGLAND is a large, semi-submersible drilling vessel owned by Ugland Shipping A/S, and under a long-term bareboat charter to claimant-respondent, Zapata Ugland Drilling, Inc. (hereinafter referred to as "Zapata"). After a trial before the Hon. William M. Steger, District Judge, the Court found that the collision was the sole fault of the M/V VULCAN and denied limitation of liability. Petitioner has not challenged the Court's liability findings.

The District Court heard extensive live testimony and reviewed numerous depositions and documents in connection with the damage issue. After reviewing the voluminous evidence and considering lengthy briefs, the Court made detailed Findings of Fact and Conclusions of Law, and Judgment was entered in accordance therewith. Zapata was awarded damages for the loss of use of the vessel during the seven day and seven hour period the vessel was delayed, based upon the daily operating rate of the Drilling Contract between the ZAPATA UGLAND and her charterer, Total Oil Marine, Ltd. Prejudgment interest was awarded at the rate of 12%, which was Zapata's cost of borrowing money.

Based upon well-settled law, the United States Court of Appeals for the Fifth Circuit affirmed *per curiam* the lower court's decision in all respects. Sabine has petitioned this Honorable Court to review the measure of damages and rate of prejudgment interest by writ of certiorari. As in the appellate court, petitioner does not question the liability aspects of the Judgment.

ARGUMENT

I. The decisions below were totally correct in using the Drilling Contract daily operating rate as an evidentiary guide for measuring damages for loss of use of the vessel.

Petitioner concedes that under settled law in the Fifth Circuit the respondent is entitled to damages for loss of use of the drilling vessel during the entire period that the vessel was delayed from beginning its drilling contract, and that the contract rate may be used as a proper evidentiary guide for measuring that loss. *Skou* v. *United States*, 526 F.2d 293 (5th Cir. 1976); *Delta Marine Drilling Co.* v. *M/V Baroid Ranger*, 454 F.2d 128 (5th Cir. 1972). *See generally* GILMORE & BLACK, THE LAW OF ADMIRALTY 526 (2d ed. 1975). *See also Continental Oil Co.* v. *S.S. Electra*, 431 F.2d 391 (5th Cir. 1970), *cert. denied*, 401 U.S. 937 (1971); *Agwilines, Inc.* v. *Eagle Oil & Shipping Co.*, 153 F.2d 869 (2d Cir. 1946). It is unquestionable that the point is well-settled in the Fifth Circuit, and there is neither conflict between the Fifth Circuit and any other court of appeals nor between such Court and prior decisions of the Supreme Court. Petitioner simply does not like the law as it applies to its case and asks that this Court change it.

Petitioner asserts that the Fifth Circuit has chosen to ignore this Court's decisions in *The Conqueror*, 166 U.S. 110 (1897) and *The Potomac*, 105 U.S. 630 (1882). Such a contention indicates petitioner's continuing failure to grasp the basic principles involved in this case. *Conqueror* and *Potomac* are early cases articulating the basic admiralty doctrine of *restitutio in integrum*. The Fifth Circuit has noted that such doctrine, strictly construed, would limit

damages to the difference in the value of the vessel before and after the collision. In reality, however, the doctrine has long been equated with the cost of necessary repairs and the loss of earnings while such repairs are being made. *Delta Marine, supra* at 129. Thus, in accordance with the rule of the *Delta Marine* and *Skou* cases, the Fifth Circuit held in the instant case that damages for loss of use are properly measured by using the daily operating rate of the vessel. Payment of that rate by the tort feasor, when it has not been paid by the oil company-charterer, effectively restores the vessel to the same position it would have been in had the collision not occurred. That is what the doctrine of *restitutio in integrum* is all about. The decisions of the Fifth Circuit and the Supreme Court can hardly be seen as conflicting.

Just as petitioner's attempt to create a conflict is unmeritorious, its argument that the case is of sufficient importance to justify the granting of a writ is unconvincing. We need hardly inform this Court of the number of maritime cases heard annually by the Fifth Circuit. Because of its geographical position, it has developed a national reputation of expertise in the field. The four key Fifth Circuit cases attacked by Petitioner (this case, *Continental Oil, Delta Marine* and *Skou*) were decided by four separate panels — twelve judges including the present and former Chief Judges — without dissent. No judicial, academic or professional criticism has been raised to this line of cases. The number of cases arising out of offshore operations in the Gulf of Mexico has made the Fifth Circuit particularly aware of the needs and expectations of vessels involved in the offshore drilling industry. Although "alarming" to petitioner, the influence of the Fifth Circuit on other courts which have considered the issue, *e.g., Pinto* v. *M/S Fernwood,* 507 F.2d 1327, 1331 (1st Cir. 1974), indicates its leadership in the field.

The law is unquestionably clear on the issue presented. It was carefully and properly applied to the facts of this case. The issue involved was one on which the Fifth Circuit

was particularly qualified to opine, and the decision undoubtedly considered the nature and number of persons who might be affected by its outcome. The resolution of the issue was in all respects correct and is not of sufficient importance to otherwise justify the granting of a writ.

II. The awarding of prejudgment interest at a rate equivalent to the injured party's cost of borrowing was not an abuse of discretion.

Petitioner does not ask for a review of respondent's right to prejudgment interest; it is merely unhappy with the rate. Petitioner asserts that the appellate court failed to follow its "general rule" that prejudgment interest should be based on the legal rate prevailing in the State at the time of the collision. Quite to the contrary, although the Fifth Circuit has noted that a federal court *may* consider by analogy the law of the State as a basis for establishing the interest rate, *Geotechnical Corp.* v. *Pure Oil Co.,* 214 F.2d 476 (5th Cir. 1954), it expressly stated that the Court was not bound by statutory interest rates. I*d.* at 478; *Gardner* v. *The Calvert,* 253 F.2d 395, 402-03 (3d Cir. 1958).

Prejudgment interest, as an element of compensatory damages, is "part of just compensation for the wrong done . . . ." *Sinclair Refining Co.* v. *S.S. Green Island,* 426 F.2d 260, 262 (5th Cir. 1970). The unchallenged fact finding was that Zapata's cost of borrowing money at the time of the collision was 12%. To award prejudgment interest at a rate less than its actual borrowing cost would not compensate Zapata for its loss and would run counter to the underlying principles of *restitutio in integrum.*

It is interesting to note that petitioner claims the rule in this case is contrary to a fair and orderly system of justice. To the contrary, the rigid application of State statutes would be totally arbitrary and unrelated to the facts of any given case. One goal of a federal body of maritime law is to achieve uniformity throughout the several States. Such uniformity would be lost by strict

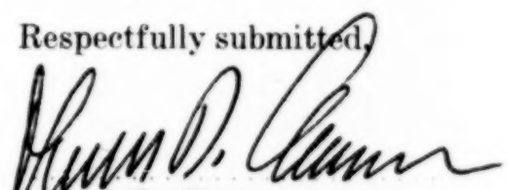
adherence to State statutes which may vary from place to place. Only by considering the realities of a given factual situation (such as the cost of borrowing money) and applying the well-reasoned discretion of a federal judge, can the goal of uniformity be achieved. There was no abuse of that discretion in this case.

CONCLUSION

Both the District and Appellate Courts were manifestly correct in awarding damages for loss of use of the vessel based upon the rate set forth in the Drilling Contract, and no abuse of discretion was present in the awarding of pre-judgment interest in accordance with the injured party's cost of borrowing money. There is no substantial conflict of any kind present, and the matter is not of sufficient importance to justify the granting of the writ. Most importantly, however, the Appellate Court has not departed from the accepted and usual course of judicial proceedings so as to call for an exercise of this Court's power of supervision.

Petitioner has already received one appellate review of its case. The purpose of certiorari is not merely to give the defeated party another hearing. For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

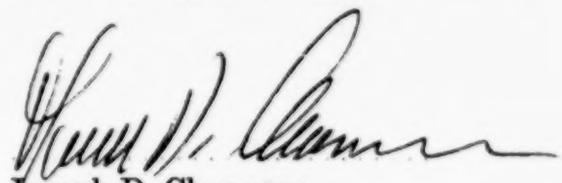


Joseph D. Cheavens
Attorney for Respondent,
Zapata Ugland Drilling, Inc.

Of Counsel:
Baker & Botts
3000 One Shell Plaza
Houston, Texas 77002
(713) 229-1250.

CERTIFICATE OF SERVICE

I certify that three copies of the foregoing Brief in Opposition were served upon Mr. W. Garney Griggs, Ross, Griggs & Harrison, 927 Chamber of Commerce Building, Houston, Texas 77002, by personal delivery at his office on the 23rd day of August, 1977.



Joseph D. Cheavens